IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 68 OF 2005

Shahinbano Munir Ahmed Shaikh
and another. ... Applicants.

Versus.

Munir Ahmed Chanobhai Shaikh
and another. ... Respondents.

Shri A.P.Kulkarni for the Applicants.

Ms.R.M.Gadhvi, A.P.P. for the Respondent-State.

Shri Shaikh i/by Shri K.K.Wadhmare for the Respondent No.1.

CORAM : ABHAY S. OKA, J.

DATED : 16th August, 2005.

P.C.:

1. Heard Shri Kulkarni for the Applicant and Shri Shaikh for the Respondent No.1.

2. The Applicant No.1 is the wife of Respondent No.1.

The Applicant No.2 is the son of Applicant No.1 and the Respondent No.1. An application under section 125 of the Code of Criminal Procedure, 1973, was filed by the Applicant against the Respondent No.1 praying for monthly allowance for maintenance. The said application was contested by the Respondent No.1 on various grounds including the ground that there was a valid talaq/divorce given by the Respondent No.1 to the Applicant No.1. The learned Magistrate allowed the said

Application by directing the Respondent No.1 to pay monthly maintenance of Rs.1000/- to the Applicant No.1 and monthly maintenance of Rs.800/- to the Applicant No.2.

3. The Revision Application filed by the Respondent No.1 against the impugned Judgment and order dated 5th January 2005 has been partly allowed by the learned Additional Sessions Judge. The learned Sessions Judge dismissed the Application for maintenance made by the Applicant No.1 and reduced the quantum of maintenance payable to the Applicant No.2 to Rs.500/- per month.

4. Shri Kulkarni, the learned Advocate appearing for the Applicant submitted that the learned Addl. Sessions Judge has reappreciated the evidence on record and has come to an erroneous conclusion that the Respondent No.1 has established Talaq/divorce. He submitted that no reasons are assigned by the learned Judge for coming to the conclusion that the Applicant No.2 is entitled to maintenance at the rate of only Rs.500/- per month.

5. Shri Shaikh appearing for the Respondent No.1 stated that the Respondent No.1 has deposited monthly maintenance payable to the Applicant No.2 upto date. The statement is accepted. He submitted that there is no justification for interference as a clear finding of fact has been recorded by the Revisional Court. He

submitted that there was no justification for the Trial Court for awarding monthly maintenance at the rate of Rs.800/- per month to the Applicant No.2.

6. I have considered the submissions. After considering the evidence of the Respondent No.1 and his witnesses, the learned Addl.Sessions Judge has accepted the case made out by the Respondent No.1 that there was a valid talaq. The learned Addl.Sessions Judge has recorded a finding that the Applicant No.1 has also stated in her evidence about the meeting and reconciliation prior to the talaq. The learned Advocate for the Applicant has placed reliance on a decision of the Supreme Court reported in (2001) 7 S.C.C. page 740 (Danial Latifi and another v/s. Union of India), and a decision of the Division Bench of this Court reported in 2002(2) Mah.L.J. page 115 (Naseemunisa Begum d/o.Shaikh Yasin & another v/s. Shaikh Abdul Rehman s/o. Shaikh Gaffar and another). In my view, on the basis of the oral evidence on record, a finding has been recorded that there was a valid talaq. The finding is based on the evidence on record. The said finding cannot be disturbed in this Revision Application. The decision of the Apex Court in the case of Danial Latifi (supra) will not help the Applicant. The decision of the Division bench in the case of Naseemunisa Begum (supra) is also of no avail to the Applicant as once a finding is recorded that there is a valid talaq, the Applicant No.1

will have to take out appropriate proceedings under the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

7. After considering the documentary evidence regarding the property held by the Respondent No.1, the learned Magistrate has fixed the monthly allowance payable to the Applicant No.2 at Rs.800/-. A perusal of the Judgment of the learned Addl.Sessions Judge shows that no reasons have been assigned for reducing the said amount to Rs.500/- per month. In my view that part of the order of the learned Addl.Sessions Judge is unsustainable. Without recording any reason he could not have reduced the monthly allowance payable to the Applicant No.2 who is the son of the Respondent No.1.

8. Hence I pass the following order:

(i) The impugned Judgment and order dated 5th January 2005 in so far as it relates to the grant of maintenance to the Applicant No.1 is confirmed with liberty to the Applicant No.1 to take out appropriate proceedings under the Muslim Women (Protection of Rights on Divorce) Act, 1986.

(ii) Clause 3 of the operative part of the impugned order dated 5th January 2005 is

quashed and set aside and the Respondent No.1 is directed to pay monthly allowance to the Applicant No.2 at the rate of Rs.800/- per month from the date of filing of the Application under section 125 of the said Code of 1973.

(iii) Clause 4 of the operative part of the impugned Judgment and order dated 5th January 2005 is confirmed.

(iv) Revision Application is disposed of in the above terms.

(v) The Respondent No.1 is directed to pay costs of Rs.2500/- to the Applicant No.2 of this Revision Application. The amount of costs will be paid to the Applicant No.1 on behalf of the Applicant No.2.

(vi) The parties to act on an authenticated copy of this Court.

Judge.